IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 157 OF 2006

EKNATH AGARWADEKAR,PRESENTLY AT JUDICIAL LOCKUP, PANAJI GOA. ....Applicant

Versus

STATE OF GOA AS REP.BY OFFICER IN CHARGE ANC POLICE STATION, PANAJI GOA ....Respondent

Mr. D' Souza, Advocate for the Applicant.
Mr. S. N. Sardessai, P.P.for the State/respondent

Coram:- N. A. BRITTO, J.

Date:- 24th March, 2006

P.C.

Heard Shri D' Souza, the learned Counsel on behalf of the applicant/accused and Shri Sardessai, the learned P. P. on behalf of the respondent.

2. The applicant accused was arrested on 20.02.2006 and the allegation against him is that he was found in possession of 300 gms of Charas, which is a variable quantity, punishable under Section 20(b)(ii)(B) of the N.D.P.S. Act, 1985. The applicant/accused approached the learned Special Judge, N.D.P.S. Court, Mapusa, with his application dated 20.02.2006, for bail, which came to be rejected by Order dated 09.03.2006 and hence the applicant/accused is now before this Court seeking bail.

3. It appears that earlier on or about 23.12.2002, the accused was arrested and a Criminal case under the same Sections is pending before the learned Special Judge. Shri D' Souza, the learned Counsel on behalf of the applicant/accused, has taken exception to the statement of the Investigating Officer, in Para 4 of the reply filed, that the said case is

fixed for arguments and also to the observation of the learned Special Judge that the said case is almost at it conclusion and ripe for disposal. According to the learned Counsel, on behalf of the accused, the cross examination of the Investigating Officer is still going on and, as such, the disposal of the case is certainly likely to take some more time.

4. Needless to observe, whether on 23.12.2002, or for that matter, on 20.02.2006, what the accused was alleged to have been found is variable quantity of Charas punishable under Section 20(b)(ii)(B) of the N.D.P.S. Act, 1985, for which, the maximum punishment provided is imprisonment extending up to the period of ten years and fine of Rs.1,00,000/-. It appears that a Judgment of this Court in the case of Chandra Bahadur Hamal v. State of Goa (CRMA 38/2005), was brought to the notice of the learned special Judge, submitting that in a similar situation, bail was granted to an accused. A copy of the same Judgment is also filed before this Court. The only objection taken in the reply filed is that the applicant/accused has continued his alleged trade of selling drugs even after he being enlarged on bail in the previous case. No doubt, that after the arrest of the accused for the offence allegedly committed by him on 23.12.2002, the accused was released on bail and it appears that the said grant of bail has been used by the accused as a licence to continue his trade. However, in my view, the accused could be admitted with a condition that whilst he is on bail, he will not commit a similar offence again, in terms of Section 437 of the Code. With the above observation, the application is allowed. The accused shall be admitted to bail and shall be released upon execution of a bond of Rs.10,000/- with one surety in the likeamount to the satisfaction of the learned Special Judge, Mapusa, with the condition as aforesaid.

Expedite authenticated copy. Humdast allowed.

N. A. BRITTO, J.

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